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Cases, Regulations and Statutes

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The Committee Reports indicated that the 1990 Act was meant to supplement, but not to replace, prior case law.[7] Thus, the pre-1990 rules requiring that an agreement be binding during life and at death and contain a fixed and determinable price continued to apply.

Estate of Amlie v. Commissioner

In a 2006 case, *Amlie v. Commissioner*,[8] involving the valuation of stock of an Iowa bank, the exceptions in I.R.C. § 2703(b) were satisfied so I.R.C. §2703(a) did not provide a basis for disregarding the pre-death agreement.

In conclusion

So, what was feared would be a barrier to relying upon the pre-1990 rules turned out not to be a barrier after all. Pre-death planning is, of course, vital if there is reliance on the *Amlie* decision and the language in the 1990 Act.

A further footnote

A careful, well-documented record of valuations determined each year by the designated group doing the valuation of farmland, machinery, stored grain, livestock inventory and other assets including business vehicles, is also vital.

END NOTES

[1] See, e.g., Estate of Littick v. Comm'r, 31 T.C. 181 (1958), *acq.* 1959-2 C.B. 5.

[2] See, e.g., Estate of Gannon v. Comm'r, 21 T.C. 1073 (1954); Estate of Blount v. Comm'r, T.C. Memo. 2004-116, *aff'd, rev'd and rem'd in part*, 428 F.3d 1338 (11th Cir. 2005).

[3] E.g., Estate of Gloeckner v. Comm'r, T.C. Memo. 1996-148, *rev'd*, 152 F.3d 208 (2d Cir. 1998).

[4] Pub. L. No. 101-508, § 11602(a), 104 Stat. 1388 (1990).

[5] I.R.C. § 2703(a).

[6] I.R.C. § 2703(b). See Ltr. Rul. 200852029, Sept. 19, 2008 (interest in real estate joint venture not subject to I.R.C. § 2703 special valuation inasmuch as more than 50 percent was owned by persons who were not family members and interests were subject to restrictions in buy-sell agreement).

[7] 136 Cong. Rec. 30,488, 30,540-41 (1990).

[8] T.C. Memo. 2006-76. For discussion of this case, see Harl, "Fixing Values at Death for Federal Estate Tax Purposes," 17 *Agric. L. Dig.* 73 (2006).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ADVERSE POSSESSION

FENCE. The plaintiffs owned land north of the defendant's property and the two properties were separated by a fence in existence for more than 50 years. In preparation for granting an easement for a pipeline, the defendant had a survey performed which showed that the fence was located north of the true boundary between the properties. The pipeline company destroyed the old fence and constructed a new fence on the true boundary. The plaintiffs sued for possession and a permanent injunction to remove the fence and damages for the cost of a new fence at the old location. The trial court ruled in favor of the plaintiffs, holding that the plaintiffs had proved continuous possession of the disputed land by reason of the fence as a boundary. On appeal the defendants challenged the sufficiency of the evidence of actual possession of the disputed strip of land. Under La. Civ. Code art. 3424, to acquire possession, one must intend to possess as owner and must take corporeal possession of the thing. La. Civ. Code art. 3425 provides that corporeal possession is the exercise of physical acts of use, detention or enjoyment over a thing. One who possesses a part of an immovable by virtue of a title is deemed to have constructive possession within the limits of recorded title. Under La. Civ. Code art. 3426, in the absence of title, one has possession only of the area that the person actually possesses. Actual possession must be either inch by inch possession or possession within enclosures. An enclosure is any natural or artificial boundary. La. Civ. Code art. 3426, comment (d). For the purposes of acquisitive prescription (adverse possession), actual possession is determined according to the nature of the property. See La. Civ. Code art. 3487, revision comment (c). In this case, the fence ran through a wooded wetland area which prevented consistent activity up to the fence line. Thus, the court found that the plaintiffs were not required to show that they planted crops, mowed or cut timber on a regular basis up to the fence line. The court further found that plaintiffs exercised corporeal possession of the disputed strip of land based on activities including maintaining the fence line, cutting hay and hunting. The appellate court affirmed the trial court that the original fence line was the legal boundary between the properties by acquisitive prescription. **Madden v. L.L. Golson, Inc., 2017 La. App. LEXIS 1203 (La. Ct. App. 2017)**.

ANIMALS

HORSES. The plaintiff was injured while riding a horse the plaintiff was considering purchasing from the defendants. The plaintiff had told the defendants that the plaintiff had some experience in riding horses but just before attempting to ride the horse, the plaintiff asked the defendant whether the horse was safe for the plaintiff. The defendant assured the plaintiff that the horse was safe. However, the plaintiff did not have much experience with gaited horses, as was the horse involved, and quickly lost control of the horse and was thrown. The defendants had posted warning signs about the dangers of farm animal activities and sought summary judgment based on the Kentucky Farm Animals Activities Act, Ky Rev. Stat. §§ 247.401-4029. The trial court granted the summary judgment for the defendants and the plaintiff appealed, arguing that material issues of fact remained unresolved. Ky Rev. Stat. §§ 247.402(1) provides: "The inherent risks of farm animal activities are deemed to be beyond the reasonable control of farm animal activity sponsors, farm animal professionals, or other persons. Therefore, farm animal activity sponsors, farm animal professionals, or other persons are deemed to have the duty to reasonably warn participants in farm animal activities of the inherent risks of the farm animal activities but not the duty to reduce or eliminate the inherent risks of farm animal activities. Except as provided, no participant or representative of a participant who has been reasonably warned of the inherent risks of farm animal activities shall make any claim against, maintain any action against, or recover from a farm animal activity sponsor, a farm animal professional, or any other person for injury, loss, damage, or death of the participant resulting from any inherent risks of farm animal activities." The Act provides several exceptions, including Ky Rev. Stat. §§ 247.402(b)-(e) "[The animal owner] [p]rovided the farm animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the farm animal activity and to safely manage the particular farm animal based on the participant's representations of the participant's ability; . . . (d) commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or (e) negligently or wrongfully injures the participant. The defendants argued that the plaintiff represented during the pre-purchase conversations that the plaintiff was an experienced rider; therefore, the defendants argued that they had not "failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the farm animal activity." However, the appellate court stated that the defendants were required to to make a reasonable and prudent inquiry into the plaintiff's ability to manage the particular animal on which the plaintiff was attempting to ride. Because the plaintiff asked whether the horse was safe for the plaintiff before getting on the horse, this gave notice to the defendants that further inquiry was needed. Because the testimony and evidence was conflicting on this point, the appellate court held that summary judgment was inappropriate. The appellate decision is designated as not for publication. **Tabor v. Daugherty, 2017 Ky. App. Unpub. LEXIS 476 (Ky. Ct. App. 2017)**.

FEDERAL ESTATE AND GIFT TAXATION

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The estate represented that the value of the decedent's gross estate was less than the basic exclusion amount in the year of the decedent's death including any taxable gifts made by the decedent. The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201724002, June 19, 2017; Ltr. Rul. 201724003, June 19, 2017; Ltr. Rul. 201724004, June 19, 2017; Ltr. Rul. 201724011, June 19, 2017; Ltr. Rul. 201724014, June 19, 2017; Ltr. Rul. 201724019, June 19, 2017; Ltr. Rul. 201724020, June 19, 2017.**

FEDERAL FARM PROGRAMS

ORGANIC FOOD. The AMS has adopted as final regulations amending the National List of Allowed and Prohibited Substances within the USDA organic regulations, to prohibit the use of eight substances in organic production and handling after June 27, 2017: Lignin sulfonate (for use as a floating agent); furosemide; magnesium carbonate; and the nonorganic forms of chia, dillweed oil, frozen galangal, frozen lemongrass, and chipotle chile peppers. This action also renews three substances on the National List to continue to allow nonorganic forms of inulin-oligofructose enriched, Turkish bay leaves, and whey protein concentrate in organic products. **82 Fed. Reg. 21241 (July 6, 2017)**.

FEDERAL INCOME TAXATION

CHARITABLE DEDUCTION. The taxpayer was a limited liability company taxed as a partnership for federal income tax purposes. The taxpayer owned and operated two golf courses it developed on its own land. The golf courses were created using loans for which the golf courses were collateral. The loan agreements prohibited the enforcement of any oral agreements concerning the property without the written consent of the lenders. The taxpayer granted a conservation easement on the two courses to a non-profit corporation. Seven months after the transfer of the easement, the secured lenders both consented in writing to subordinate their loans to the conservation easement holder. The IRS argued that the subordination agreements provided seven months after the grant of the easements violated Treas. Reg. § 1.170A-14(g)(2) which requires any subordination agreements to be effective on the date of the easement transfer. The taxpayer attempted to prove that the lenders had orally subordinated their loans just before the easement transfers but the court rejected that claim because the loan agreements prohibited such agreements. The court held that the IRS properly denied any deduction for the transfer of the easement because, as of the date of the easement, the loans were not subordinated and the easement could be defeated by enforcement of the loans. The appellate court affirmed. **RP Golf, LLC v. Comm'r, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,266 (8th Cir. 2017), *aff'g*, T.C. Memo. 2016-80**.

CHILD AND DEPENDENT CARE CREDIT. The IRS has published information about the child and dependent tax credit. Eligible taxpayers may be able claim it on their taxes in 2018 if they paid for day camp or for someone to care for a child, dependent or spouse during 2017. *Qualifying Person*. The care must have been for a "qualifying person." A qualifying person can be a child under age 13. A qualifying person can also be a spouse or dependent who lived with the taxpayer for more than half the year and is physically or mentally incapable of self-care. *Work-Related Expenses*. The care must have been necessary so the taxpayer could work or look for work. For those who are married, the care also must have been necessary so a spouse could work or look for work. This rule does not apply if the spouse was disabled or a full-time student. *Earned Income*. The taxpayer and spouse, if married filing jointly, must have earned income for the tax year. Special rules apply to a spouse who is a student or disabled. *Credit Percentage/Expense Limits*. The credit is worth between 20 and 35 percent of allowable expenses. The percentage depends on the income amount. Allowable expenses are limited to $3,000 for care of one qualifying person. The limit is $6,000 if the taxpayer paid for the care of two or more. *Care Provider Information*. The name, address and taxpayer identification number of the care provider must be included on the return. The childcare provider cannot be the taxpayer's spouse, dependent or the child's parent. *IRS Interactive Tax Assistant tool*. Use "Am I Eligible to Claim the Child and Dependent Care Credit?" tool on IRS.gov to help determine if the taxpayer is eligible to claim the credit. *Dependent Care Benefits*. Special rules apply for people who get dependent care benefits from their employer. See Form 2441, *Child and Dependent Care Expenses*, for more on these rules. File the form with a tax return.

Special Circumstances. Since every family is different, the IRS has a series of exceptions to the rules in the qualification process. These exceptions allow a greater number of families to take advantage of the credit. For more information, see IRS Publication 503, *Child and Dependent Care Expenses*. **IRS Summertime Tax Tip 2017-5**.

CORPORATIONS

REORGANIZATIONS. On March 10, 2005, the IRS published a notice of proposed rulemaking (REG–163314–03, 70 Fed. Reg. 11903) containing proposed regulations under I.R.C. §§ 332, 351, and 368. The 2005 proposed regulations generally would have provided that the non-recognition rules in subchapter C of chapter 1 of subtitle 1 of the Code do not apply unless there is an exchange (or, in the case of I.R.C. § 332, a distribution) of net value. The 2005 proposed regulations also provided that I.R.C. § 332 would apply only if the recipient corporation receives some payment for each class of stock it owns in the liquidating corporation. Finally, the 2005 proposed regulations provided guidance on the circumstances in which (and the extent to which) creditors of a corporation are treated as proprietors of the corporation in determining whether continuity of interest is preserved in a potential reorganization (Creditor Continuity of Interest). On December 12, 2008, the IRS adopted the Creditor Continuity of Interest provisions of the 2005 proposed regulations as final regulations (TD 9434, 73 FR 75566). On March 28, 2016, minor portions of the 2005 proposed regulations that reflected statutory changes to I.R.C. §§ 332 and 351 were adopted as final regulations as part of a Treasury Decision adopting final regulations under I.R.C. §§ 334(b)(1)(B) and 362(e)(1). (TD 9759, 81 FR 17066). The Treasury Department and the IRS have decided to withdraw the remainder of the 2005 proposed regulations containing proposed regulations that would have required an exchange or distribution of net value in certain nonrecognition transactions under I.R.C. §§ 332, 351 and 368. The withdrawn proposed rules also provided that I.R.C. § 332 would apply only if the recipient corporation received some payment for each class of stock it owned in the liquidating corporation, and addressed the treatment of certain distributions not qualifying for I.R.C. § 332 tax-free treatment. **82 Fed. Reg. 32281 (July 13, 2017)**.

DISABILITY PAYMENTS. The taxpayer had been employed as a fireman and was retired initially on disability in 1991. That year, the taxpayer began to receive a disability retirement allowance which was calculated with reference to the taxpayer's age, length of service, and average final compensation before the disability retirement. In 2004, the taxpayer reached age 60 and the pension funds transferred the taxpayer from the disability retirement allowance to a service retirement allowance. The taxpayer excluded the allowance in 2012 and the IRS assessed taxes based on the allowance as taxable income. The taxpayer argued that the allowance was a disability benefit similar to workers' compensation and non-taxable. Under I.R.C. § 104(a)(1) gross income does not include amounts received under workers' compensation acts as compensation for personal injuries or sickness. This exclusion also applies to statutes in the nature of workers' compensation acts which provide compensation to employees for personal injuries or sickness incurred in the course of employment. Under Treas. Reg. § 1.104-1(b), the exclusion, however, "does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness." The court held that the retirement allowance was not excludible from taxable income as a disability benefit because the amount was calculated with reference to the taxpayer's age, length of service, and average final compensation before the disability retirement. **Taylor v. Comm'r, T.C. Memo. 2017-132**.

DISASTER LOSSES. The IRS has published information about deducting casualty losses: *Casualty loss*. A taxpayer may be able to deduct a loss based on the damage done to their property during a disaster. A casualty is a sudden, unexpected or unusual event. This may include natural disasters like hurricanes, tornadoes, floods and earthquakes. It can also include losses from fires, accidents, thefts or vandalism. *Normal wear and tear*. A casualty loss does not include losses from normal wear and tear. It does not include progressive deterioration from age or termite damage. *Covered by insurance*. If a taxpayer insured the property, the taxpayer must file a timely claim for reimbursement of the loss. If the taxpayer does not file a claim, the taxpayer cannot deduct the loss as a casualty or theft. Taxpayers must reduce the loss by the amount of the reimbursement received or expected to receive.

When to deduct. As a general rule, taxpayers deduct a casualty loss in the year it occurred. However, if a taxpayer has a loss from a federally declared disaster, they may have a choice of when to deduct the loss. They can choose to deduct it on their return for the year the loss occurred or on an original or amended return for the immediately preceding tax year. This means that if a disaster loss occurs in 2017, the taxpayer does not need to wait until the end of the year to claim the loss. They can instead choose to claim it on their 2016 return. Claiming a disaster loss on the prior year's return may result in a lower tax for that year, often producing a refund. *Amount of loss*. Taxpayers figure the amount of loss using the following steps: Determine the adjusted basis in the property before the casualty. For property a taxpayer buys, the basis is usually its cost to the taxpayer. For property acquired in some other way, such as inheriting it or getting it as a gift, the basis is determined differently. For more information, see Publication 551, *Basis of Assets*. Determine the decrease in fair market value (FMV) of the property as a result of the casualty. FMV is the price for which a person could sell their property to a willing buyer. The decrease in FMV is the difference between the property's FMV immediately before and immediately after the casualty. Subtract any insurance or other reimbursement received or expected to receive from the smaller of those two amounts. *$100 rule*. After figuring the casualty loss on personal-use property, taxpayers reduce that loss by $100. This reduction applies to each casualty-loss event during the year. It does not matter how many pieces of property are involved in an event. *10 percent rule*. A taxpayer must reduce the total of all casualty or theft losses on personal-use property for the year by 10 percent of the taxpayer's adjusted gross income. *Future income*. Taxpayers should not consider the loss of future profits or income due to the casualty. *Form 4684*. Taxpayers should complete Form 4684, *Casualties and Thefts*, to report the casualty loss on a federal tax return. Claim the deductible amount on Schedule A, *Itemized Deductions*. *Business or income property*. Some of the casualty loss rules for business or income property are different from the rules for property held for personal use. See Publication 584-B, *Business Casualty, Disaster, and Theft Loss Workbook*. **IRS Summertime Tax Tip 2017-1**.

On May 18, 2017, the President determined that certain areas in Idaho were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms and flooding which began on March 6, 2017. **FEMA-4313-DR.** On June 15, 2017, the President determined that certain areas in Arkansas were eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding which began on April 26, 2017. **FEMA-4318-DR.** On June 16, 2017, the President determined that certain areas in Kansas were eligible for assistance from the government under the Act as a result of a severe winter storm and flooding which began on April 28, 2017. **FEMA-4319-DR.** Accordingly, taxpayers in these areas may deduct the losses on their 2017 or 2016 federal income tax returns. See I.R.C. § 165(i).

INNOCENT SPOUSE RELIEF. The taxpayer was denied innocent spouse relief by the IRS on October 7, 2014. On January 6, 2015, 91 days later, the taxpayer mailed a petition to the Tax Court seeking review of the IRS decision. The Tax Court dismissed the case for lack of jurisdiction. I.R.C. § 6015(e)(1)(A) provides that "the Tax Court shall have jurisdiction . . . to determine the appropriate relief available to [an] individual under this section if [the] petition is filed … not later than" the earlier of 90 days after the date the IRS mails its final notice of determination, or six months after the request for innocent spouse relief was made. The appellate court affirmed, holding that I.R.C. § 6015(e)(1)(A) specifically predicates the Tax Court jurisdiction on a timely filed petition and the taxpayer's failure to even mail the petition within the 90 days, clearly deprived the Tax Court of jurisdiction in this case. **Matuszak v. Comm'r, 2017-2 U.S. Tax Cas. (CCH) ¶ 50,269 (2d Cir. 2017),** ***aff'g, unrep. T.C. dec***.

LEGAL FEES. The taxpayer was a CPA employed by a pharmaceutical company until 2010, when the employment was terminated. As part of the termination, the taxpayer and employer attempted to negotiate a severance package which included a non-compete clause preventing the taxpayer from providing services to a competitor for two years. The taxpayer hired an attorney to assist with the negotiations. Three months after the employment was terminated, the taxpayer formed an S corporation to conduct consulting services for pharmaceutical companies. However, because of the non-compete clause, the taxpayer could not obtain any clients. The taxpayer claimed the legal fees as a deduction on the corporation's Form 1120S, arguing that the fees were incurred as part of the taxpayer's efforts to protect the consulting business. The court stated that generally, legal fees are deductible as an ordinary and necessary business expense only if the matter with respect to which fees were incurred originated in the taxpayer's trade or business and only if the claim is sufficiently connected to that trade or business. The deductibility of the fees does not depend on the consequences that might result from a win or loss of a legal claim. The court held that the legal fees were not eligible for a business deduction because the legal issues involved arose out of the taxpayer's employment and not out of the corporation's activities. **Dulik v. Comm'r, T.C. Summary Op. 2017-51**.

PENSION PLANS. For plans beginning in July 2017 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 2.80 percent. The 30-year Treasury weighted average is 2.90 percent, and the 90 percent to 105 percent permissible range is 2.61 percent to 3.04 percent. The 24-month average corporate bond segment rates for July 2017, *without adjustment* by the 25-year average segment rates are: 1.72 percent for the first segment; 3.80 percent for the second segment; and 4.72 percent for the third segment. The 24-month average corporate bond segment rates for July 2017, taking into account the 25-year average segment rates, are: 4.16 percent for the first segment; 5.72 percent for the second segment; and 6.48 percent for the third segment. **Notice 2017-39, I.R.B. 2017-31**.

REGULATIONS. In response to the President's Executive Order 13789, the IRS has reviewed all significant tax temporary, proposed and final regulations issued after January 1, 2016. Out of 105 of such regulations reviewed, the IRS has identified eight regulations which met the criteria of EO 13789 that (1) impose an undue financial burden on U.S. taxpayers; (2) add undue complexity to the Federal tax laws; or (3) exceed the statutory authority of the IRS. 1. *Proposed Regulations under I.R.C. § 103 on Definition of Political Subdivision (REG-129067-15; 81 F.R. 8870)*. These proposed regulations define a "political subdivision" of a state (e.g., a city or county) that is eligible to issue tax-exempt bonds for governmental purposes under I.R.C. § 103. The proposed regulations require a political subdivision to possess three attributes: (i) sovereign powers; (ii) a governmental purpose; and (iii) governmental control. 2. *Temporary Regulations under I.R.C. § 337(d) on Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) (T.D. 9770; 81 F.R. 36793)*. These temporary regulations amend existing rules on transfers of property by C corporations to REITs and RICs generally. In addition, the regulations provide additional guidance relating to certain newly-enacted provisions of the Protecting Americans from Tax Hikes Act of 2015, which were intended to prevent certain spinoff transactions involving transfers of property by C corporations to REITs from qualifying for nonrecognition treatment. 3. *Final Regulations under I.R.C. § 7602 on the Participation of a Person Described in I.R.C. § 6103(n) in a Summons Interview (T.D. 9778; 81 F.R. 45409)*. These final regulations provide that persons described in I.R.C. § 6103(n) and Treas. Reg. §301.6103(n)-1(a) with whom the IRS contracts for services—such as outside economists, engineers, consultants, or attorneys—may receive books, papers, records, or other data summoned by the IRS and, in the presence and under the guidance of an IRS officer or employee, participate fully in the interview of a person who the IRS has summoned as a witness to provide testimony under oath. 4. *Proposed Regulations under I.R.C. § 2704 on Restrictions on Liquidation of an Interest for Estate, Gift and Generation-Skipping Transfer Taxes (REG-163113- 02; 81 F.R. 51413)*. I.R.C. § 2704(b) provides that certain non-commercial restrictions on the ability to dispose of or liquidate family-controlled entities should be disregarded in determining the fair market value of an interest in that entity for estate and gift tax purposes. These proposed regulations would create an additional category of restrictions that also would be disregarded in assessing the fair market value of an interest. 5. *Temporary Regulations under Section 752 on Liabilities Recognized as Recourse Partnership Liabilities (T.D. 9788; 81 F.R. 69282)*. These temporary regulations generally provide: (1) rules for how liabilities are allocated under I.R.C. § 752 solely for purposes of disguised sales under I.R.C. § 707; and (2) rules for determining whether "bottom-dollar payment obligations" provide the necessary "economic risk of loss" to be taken into account as a recourse liability. 6. *Final and Temporary Regulations under I.R.C. § 385 on the Treatment of Certain Interests in Corporations as Stock or Indebtedness (T.D. 9790; 81 F.R. 72858)*. These final and temporary regulations address the classification of related-party debt as debt or equity for federal tax purposes. The regulations are primarily comprised of (1) rules establishing minimum documentation requirements that ordinarily must be satisfied in order for purported debt among related parties to be treated as debt for federal tax purposes; and (2) transaction rules that treat as stock certain debt that is issued by a corporation to a controlling shareholder in a distribution or in another related-party transaction that achieves an economically similar result. 7. *Final Regulations under I.R.C. § 987 on Income and Currency Gain or Loss With Respect to a I.R.C. § 987 Qualified Business Unit (T.D. 9794; 81 F.R. 88806)*. These final regulations provide rules for (1) translating income from branch operations conducted in a currency different from the branch owner's functional currency into the owner's functional currency, (2) calculating foreign currency gain or loss with respect to the branch's financial assets and liabilities, and (3) recognizing such foreign currency gain or loss when the branch makes a transfer of any property to its owner. 8. *Final Regulations under I.R.C. § 367 on the Treatment of Certain Transfers of Property to Foreign Corporations (T.D. 9803; 81 F.R. 91012)*. I.R.C. § 367 generally imposes immediate or future U.S. tax on transfers of property (tangible and intangible) to foreign corporations, subject to certain exceptions. These final regulations eliminate the ability of taxpayers under prior regulations to transfer foreign goodwill and going concern value to a foreign corporation without immediate or future U.S. income tax. **Notice 2017-38, I.R.B. 2017-30**.

RENTAL INCOME. The IRS has published information about tax liability for renting out a residence. Receiving money for the use of a dwelling also used as a taxpayer's personal residence generally requires reporting the rental income on a tax return. It also means certain expenses become deductible to reduce the total amount of rental income that's subject to tax. *Dwelling Unit*. A dwelling unit may be a house, an apartment, condominium, mobile home, boat, vacation home or similar property. It is possible to use more than one dwelling unit as a residence during the year. *Used as a Home*. The dwelling unit is considered to be used as a residence if the taxpayer uses it for personal purposes during the tax year for more than the greater of: 14 days or 10 percent of the total days rented to others at a fair rental price. Deductions for rental expenses cannot be more than the rent received. *Personal Use*. Personal use means use by the owner, owner's family, friends, other property owners and their families. Personal use includes anyone paying less than a fair rental price. *Divide Expenses*. Special rules generally apply to the rental of a home, apartment or other dwelling unit that is used by the taxpayer as a residence during the taxable year. Usually, rental income must be reported in full, and any expenses need to be divided between personal and business purposes. Special deduction limits apply. *How to Report*. Taxpayers use Schedule E, *Supplemental Income and Loss*, to report rental income and rental expenses. Rental income may also be subject to net investment income tax. Use Schedule A, *Itemized Deductions*, to report deductible expenses for personal use. This includes such costs as mortgage interest, property taxes and casualty losses. *Special Rules*. If the dwelling unit is rented out fewer than 15 days during the year, none of the rental income is reportable and none of the rental expenses are deductible. See Publication 527, *Residential Rental Property (Including Rental of Vacation Homes)*. **IRS Summertime Tax Tip 2017-3**.

SUMMER JOBS. The IRS has published information about taxation of summer job income. *Withholding and Estimated Tax*. Students and teenage employees normally have taxes withheld from their paychecks by the employer. Some workers are considered self-employed and may be responsible for paying taxes directly to the IRS. One way to do that is by making estimated tax payments during the year. *New Employees*. When a taxpayer gets a new job, the taxpayer needs to fill out a Form W-4, *Employee's Withholding Allowance Certificate*. Employers use this form to calculate how much federal income tax to withhold from the employee's pay. The IRS Withholding Calculator tool on IRS.gov can help a taxpayer fill out the form. *Self-Employment*. A taxpayer may engage in types of work that may be considered self-employment. Money earned from self-employment is taxable. Self-employment work can be jobs such as baby-sitting or lawn care. Taxpayer should keep good records on money received and expenses paid related to the work. IRS rules may allow some, if not all, costs associated with self-employment to be deducted. A tax deduction generally reduces the taxes owed. *Tip Income*. Employees should report tip income. Taxpayers should keep a daily log to accurately report tips. Taxpayers must report tips of $20 or more received in cash in any single month to the employer. *Payroll Taxes*. Taxpayers may earn too little from their summer job to owe income tax; however, employers usually must withhold Social Security and Medicare taxes from their pay. If a taxpayer is self-employed, then Social Security and Medicare taxes may still be due and are generally paid by the taxpayer quarterly. *Newspaper Carriers*. Special rules apply to a newspaper carrier or distributor. If a taxpayer meets certain conditions, the taxpayer is self-employed. If the taxpayer does not meet those conditions, and is under age 18, the taxpayer may be exempt from Social Security and Medicare taxes. *ROTC Pay*. If a taxpayer is in an ROTC program, active duty pay, such as pay for summer advanced camp, is taxable. Other allowances the taxpayer may receive may not be taxable; see Publication 3, *Armed Forces' Tax Guide*, for details. *Use IRS Free File*. Taxpayers can prepare and e-file their federal income tax return for free using IRS Free File. Some taxpayers may not earn enough money to have to file a federal tax return, by law, but may want to if taxes were withheld. For example, a taxpayer may want to file a tax return because the taxpayer would be eligible for a tax refund or a refundable credit. IRS Free File can help with these issues. **IRS Summertime Tax Tips 2017-2**.

PROPERTY

TAX DEEDS. The decedent owned a farm which was leased to a tenant. Because of the decedent's advanced age at the time, the decedent's son managed the farm and assisted the decedent with personal matters. After the son died, the other son obtained power of attorney for the decedent's affairs and the decedent moved to a nursing home. The son arranged for a bank to handle the decedent's financial affairs; however, the payment of the property taxes on the farm was not arranged and the decedent failed to pay the taxes for two years. The defendant purchased the tax sale certificate from another business and attempted to serve notice on the decedent. The notice was sent by certified mail to the nursing home but was returned with the marking "unclaimed." The defendant then published a notice for three weeks in a local newspaper. After the three weeks, a tax deed was issued to the defendant. The decedent died and the estate sought to redeem the title to the farm, arguing that the defendant did not comply with the notice procedures set by statute. Neb. Rev. Stat. § 77-1831 (effective for 2011, the year of the notice in this case) provides: "No purchaser at any sale for taxes or his or her assignees shall be entitled to a deed from the treasurer for the real property so purchased unless such purchaser or assignee, at least three months before applying for the deed, serves or causes to be served a notice stating when such purchaser purchased the real property, the description thereof, in whose name assessed, for what year taxed or specially assessed, and that after the expiration of three months from the date of service of such notice the deed will be applied for. Neb. Rev. Stat. § 77-1832 (effective for 2011) provides: "Service of the notice provided by section 77-1831 shall be made by certified mail, return receipt requested, upon the person in whose name the title to the real property appears of record to the address where the property tax statement was mailed and upon every encumbrancer of record in the office of the register of deeds of the county. Whenever the record of a lien shows the post office address of the lienholder, notice shall be sent by certified mail, return receipt requested, to the holder of such lien at the address appearing of record." Pursuant to Neb. Rev. Stat. § 77-1834 notice by publication is only allowed "If the person in whose name the title to the real property appears of record in the office of the register of deeds in the county or if the encumbrancer in whose name an encumbrance on the real property appears of record in the office of the register of deeds in the county cannot, upon diligent inquiry, be found. . .." The court found that the defendant was not entitled to use the publication method of notice because the defendant knew the address of the decedent and failed to take all reasonable steps to serve the notice on the decedent. Therefore, the court held that the defendant did not comply with the notice requirements and the tax deed could be redeemed by the decedent's estate. **Wisner v. Vandelay Investments, LLC, 2017 Neb. App. LEXIS 112 (Kan. Ct. App. 2017)**.

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by Neil E. Harl

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First day

FARM ESTATE AND BUSINESS PLANNING

New Legislation
Succession planning and the importance of fairness
The Liquidity Problem
Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special use valuation
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the regulations
- Federal estate tax liens
- Gifts to charity with a retained life estate

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis

Use of the Trust
The General Partnership
- Small partnership exception
- Eligibility for Section 754 elections

Limited Partnerships
Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock
- Status of the corporation as a farmer
- The regular method of income taxation
- The Subchapter S method of taxation, including the "two-year" rule for trust ownership of stock
- Underpayment of wages and salaries
- Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization
- Entity Sale
- Stock redemption

Social Security
- In-kind wages paid to agricultural labor

Second day

FARM INCOME TAX

New Legislation
Reporting Farm Income
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Leasing land to family entity
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures, including consequences of exceeding the $5 million limit

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Repairs and Form 3115; changing from accrual to cash accounting
- Paying rental to a spouse
- Paying wages in kind
- PPACA issues including scope of 3.8 percent tax

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Problems in Exchanges of partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

Self-employment tax
- Meaning of "business"

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